1. Case Study: Northern Ute

In 1950, the Northern Utes[347] were awarded $7.5 million from the federal government in compensation for the loss of tribal lands.[348] At the insistence of the United States, the monies were used to make an initial $1,000 per-capita payment to Northern Ute members.[349] Almost immediately, Northern Ute members became "dependent upon unearned income derived from land claims judgments."[350] Over the next couple of years, tribal per-capita payments increased, the total per capita distributions between 1951 and 1959, totaled over $11,000 per member.[351] As with the Osage and Creek Indians a half century before, tribal factionalization, and in turn mass disenrollment, rapidly commenced at Northern Ute.

A faction of supposed Northern Ute "full-bloods" immediately sought to have another group, the "mixed-bloods," disenrolled from the Tribe.[352] The BIA encouraged this action as the first step in terminating both groups from federal obligations.[353] In 1954, at the insistence of the "full-bloods," Congress determined that the criteria for Northern Ute membership was to include so-called "full" blood quantum: "one-half degree of Ute Indian blood and a total of Indian blood in excess of one-half, excepting those who become mixed-bloods by choice."[354] Roughly 500 "mixed-bloods" were instantly disenrolled from Northern Ute.[355]

2. Analysis

Per-capita payments at Northern Ute increased over time and, in turn, membership criteria tightened further, per tribal law.[356] Endless infighting and litigation ensued. Four decades later, a federal court concluded that the Tribe's per-capita-driven membership criteria were issued in order to complete Congress's goal

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347. The Northern Utes, also known as the "Ute Indian Tribe of the Unitah and Ouray Reservation Utah," adopted an IRA constitution in 1937. CONSTITUTION AND BYLAWS OF THE UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION (1937), *available at* http://www.loc.gov/law/help/american-indian-consts/PDF/37026342.pdf.

348. Robert L. Bennett, *Building Indian Economies with Land Settlement Funds*, 20 HUM. ORG. 159, 159 (1962).

349. *Id.*; Clifford Duncan, *Chapter Five – The Northern Utes of Utah*, UTAH HISTORY TO GO, http://historytogo.utah.gov/people/ethnic_cultures/the_history_of_utahs_american_indians/chapter5.html (last visited Apr. 5, 2015).

350. JOSEPH G JORGENSEN, THE SUN DANCE RELIGION: POWER FOR THE POWERLESS 160 (1974).

351. Eric Henderson, *Ancestry and Casino Dollars in the Formation of Tribal Identity*, 4 RACE & ETHNIC ANC. L. J. 7, 22 n.227 (1998).

352. Brian L. Lewis, *So Close, Yet So Far Away: A Comparative Analysis of Indian Status in Canada and the United States*, 18 WILLAMETTE J. INT'L L. & DISP. RESOL. 38, 58 n.98 (2010).

353. JORGENSEN, *supra* note 350, at 152.

354. 25 U.S.C. § 677a(b) (2012); *see also* R. WARREN METCALF, TERMINATION'S LEGACY: THE DISCARDED INDIANS OF UTAH 181 (2002) ("The Ute Partition Act, passed in 1954 required three things, the first step called for the establishment of the tribal rolls to determine the exact number of members in the two groups.").

355. Henderson, *supra* note 351, at 22.

356. *Id.*

of tribal termination, without actually terminating the Tribe.[357] In *Chapoose v. Clark*,[358] the U.S. District Court for the District of Utah found that "Congress intended that the blood quantum requirements . . . be used only . . . to separate the full-bloods and mixed-bloods so that the mixed-bloods could be terminated."[359] Indeed, higher per-capita payment to the "full-bloods," and eventual termination of all Northern Utes, was what the federal government intended.

To this day, nearly 65 years after the Tribe's inaugural per-capita payment, membership, and disenrollment issues plague Northern Utes.[360] In addition, and despite decades of per-capita monies, 54% of Northern Ute families live in poverty and 40% of all adults residing on the Tribe's reservation are unemployed.[361] In addition, large tracts of Indian lands have passed into non-Indian hands,[362] benefiting non-Indian business interests, trimming the federal budget, and pushing the full range of state jurisdiction (including taxing jurisdiction) into Indian Country.[363] Disenrolled Northern Utes have been effectively forced to leave their ancestral land and move into mainstream American society; have become subject to state control without any federal restrictions or support; and special federal health, education, and general assistance for these members has ended.[364] Congress's goal of termination has largely been realized at Northern Ute, through disenrollment, without the federal government formally terminating the Tribe at all—through per-capita and disenrollment, the Northern Ute have self-terminated, and continue to do so.

D. Disenrollment in the Modern Era

Here, we provide one example of how federal policies have caused the disenrollment crisis to proliferate, even in this era of self-determination.

1. Case Study: Paskenta Disenrollment[365]

Nowhere has been hit harder by the disenrollment epidemic than California.[366] Since 1988, disenrollment has resulted in roughly a 10% drop in total

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357. *Cf.* South Carolina v. Catawba Indian Tribe, Inc., 476 U.S. 498, 504 (1986) (discussing the wholesale termination of the Catawba Indian Tribe and the per-capita division of tribal assets among the enrolled members, per 25 U.S.C. § 933(f) (2012)).

358. 607 F. Supp. 1027 (D. Utah 1985).

359. *Id.* at 1034.

360. Lezlee E. Whiting, *Terminated Members of Ute Tribe Dispute Time Limits on Claims*, DESERET MORNING NEWS (Nov. 6, 2007), http://www.deseretnews.com/article/695225253/Terminated-members-of-Ute-Tribe-dispute-time-limits-on-claims.html?pg=all.

361. Ojibwa, *Reservation Poverty*, NATIVE AM. NETROOTS (Dec. 5, 2012), http://nativeamericannetroots.net/diary/1411.

362. Dewakuku v. Cuomo, 107 F. Supp. 2d 1117, 1120 (D. Ariz. 2000).

363. Charles F. Wilkinson & Eric R. Biggs, *The Evolution of the Termination Policy*, 5 AM. INDIAN L. REV. 139, 139 (1977).

364. *Id.* at 139–40.

365. The Authors have represented the disenrollees in this dispute.

366. Dao, *supra* note 30.